
(1997) 08 DEL CK 0087

In the Delhi High Court

Case No : Criminal Writ Appeal No. 69 of 1997

Ajay Kumar Arora

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-08-1997

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 22(5), 226

Citation : (1998) 2 AD 430 : (1998) 3 Crimes 83 : (1996) 72 DLT 55 : (1998) 44 DRJ 38

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Naveen Malhotra, B. Babbar and S.K. Agarwal, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) By this writ petition under Article 226 of the Constitution the petitioner challenges the order of detention dated November 4, 1996 passed by the Joint Secretary to the Government of India u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the Act").

(2) Learned Counsel for the petitioner pointed out that a representation of the petitioner dated December 2, 1996 was handed over to the Jail Authorities for being transmitted to the detaining authority. On December 3, 1996 the representation of the petitioner was forwarded to the Detaining Authority under dispatch Number 5946 and the petitioner was informed about the same. On December 6, 1996 the detenu was produced before the Advisory Board when a fresh representation was filed in which the factum of dispatch of the representation dated December 3, 1996 to the Detaining Authority was mentioned. The grievance of the petitioner is that till today the representation dated December 3, 1996 has not been disposed of by the Detaining Authority.

(3) The respondent in its counter-affidavit has averred that the representation

dated December 2, 1996 was not received by the Cofeposa Unit. It is further averred that enquiries were made from the Superintendent, Central Jail, Tihar, New Delhi, vide letter dated April 9, 1997 pursuant to which a copy of the representation of the petitioner was received in the Cofeposa Unit on April 12, 1997. In view of the controversy learned Counsel for respondent No. 3 was directed to produce the dispatch register as well as the peon book of the Central Jail, Tihar. The dispatch register and the peon book have been produced by the learned Counsel for respondent No. 3. As per the dispatch register the representation of the petitioner was dispatched to the Cofeposa Unit on December 3, 1996 under dispatch Number 5946. A perusal of the peon book shows that the representation of the petitioner was delivered in the Cofeposa Unit on December 4, 1997. In any event, it is the admitted case of the respondent that a copy of the representation of the petitioner was received from the Central Jail, Tihar, on April 12, 1997. Despite the receipt of the representation the same has not been disposed of. The inaction on the part of the respondent in not dealing with the representation of the petitioner has rendered his continued detention illegal. In *Dinesh Kumar Goel v. Union of India and Others*, Cr. Writ No. 177/95, this Court while dealing with similar situation held as follows:

"But the question is as to what is to be done with the present submission of the learned Counsel for the petitioner that such a representation was, in fact, sent by the petitioner through Jail Authorities in Tihar Jail to the Central Government. We have already stated that an inquiry will be conducted by the Central Government, but we do not think that the disposal of this writ petition should await the result of such an inquiry. The matter pertains to liberty and the Fundamental Rights under Article 22(5) of the Constitution of India. We, Therefore, presume the correctness of the entries made in the register, and on that presumption, it must be held that for no fault of the petitioner his representation has not been considered. The question whether it has reached the Central Government or not and whether there was any administrative lapse, either in the Tihar Jail or in the Central Government, is a matter for inquiry. On that presumption we hold that the petitioner is entitled to be released forthwith, if he is not required in any other case."

(4) In the instant case, as already noticed, entries in the above said record of the Central Jail, Tihar, reveal that the representation was handed over by the petitioner to the Jail Authorities on December 2, 1996 and the same was delivered in the Cofeposa Unit on December 4, 1996. The matter pertains to liberty of the detenu and the benefit of doubt, if any, with regard to the receipt of the representation in the Cofeposa Unit on December 4, 1996 has to be given to him. I, Therefore, presume the correctness of the entries made in the dispatch register and the peon book of the Central Jail, Tihar.

(5) In view of the above discussion, I hold that the continued detention of the petitioner is illegal. The petitioner is directed to be released forthwith in case he

is not wanted in any other case.

The petition is disposed of.